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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,187	01/21/2004	James Kenneth Taillon	0214.007C	3673

7590 08/30/2007
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Albany, NY 12203

EXAMINER

PRASAD, CHANDRIKA

ART UNIT	PAPER NUMBER
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2839

MAIL DATE	DELIVERY MODE
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08/30/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No.	Applicant(s)	
	10/762,187	TAILLON ET AL.	
	Examiner	Art Unit	
	Chandrika Prasad	2839	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/21/07.
- 2a) ☐ This action is **FINAL**.
- 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-4, 9-16, 19 and 21-28 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-4, 9-16, 19, 21-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 - Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 - Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some * c) ☐ None of:
 - 1. ☐ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Reissue Applications

1. The amendment filed 8/21/07 is acknowledged.
2. Claims 2-4, 9-16, 19 and 21-28 are rejected under 35 U.S.C. 251 as being broadened in a reissue application filed outside the two year statutory period.
claims.

This reissue application purports to be a narrowing reissue application but it is not. The new claims in the reissue application are broadening reissue claims under MPEP section 1412.03 (I) which makes this a broadening reissue which would have needed to be filed within 2 years of the issue date of the patent (see 35 USC 251 and MPEP section 1412.03 (IV)) and would have required a declaration signed by the inventors (see MPEP section 1412.03(V)).

After the Claims 1, 5-8, 17-18 and 20 of the Patent 5,573,414 have been disclaimed; the broadest claims in the patent 5,573,414 are 2, 11, 14 and 21. Thus, the applicant is not entitled in the reissue application to include any claims broader than these claims (2,11,14 and 21) in the patent. The new independent claim 28 basically contains the limitations of patent claim 2, however, the patent claim 2 states that the step of removing takes place prior to the securing step. Claim 28 does not limit the removing step to occur before the securing step. Thus, the new claim 28 is broader than patent claim 2. Similarly, Claims 22-24 are broader than claim 9.

Such instances are not necessarily all inclusive. Unless the claims are copied exactly, it is very difficult to avoid improper broadening outside the 2 year period set forth in 35 USC 251.

A claim is broader in scope than the original claims if it contains within its scope any conceivable product or process which would not have infringed the original patent. A claim is broadened if it is broader in any one respect even though it may be narrower in other respects.

The standard for broadening if a claim is broadening is if the patent owner would be able to sue any party for infringement who previously could not have been sued for infringement.


Contact Information

3. Any correspondence to this action may be mailed to:

**Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chandrika Prasad whose telephone number is (571) 272-2099.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor can be reached at (571) 272-2800 ext 39. The fax number is (703) 872-9306.


Chandrika Prasad
Primary examiner
August 23, 2007